IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 230 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESHBHAI MOHANLAL MEHTA HEIR & L.R. OF DECD.AMRITABEN

Versus

JUSABBHAI GANIBHAI MEMON DECD. THRO' HEIRS

Appearance:

1. Civil Revision Application No. 230 of 2003

MR CL SONI for Petitioner No. 1

MR. R.S. JITIYA for Respondent No. 1-1/ to 1/7

NOTICE SERVED BY DS for Respondent No. 1/2-1/7

MR AJ SHASTRI for Respondent No. 2-3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 05/08/2003

ORAL JUDGEMENT

1. Rule. Mr. R.S. Jitiya and Mr. A.J. Shashtri learned counsel waives of service of notice of rule for and on behalf of the respondents no. 1/1 to 1/7 and respondents no. 2 and 3 respectively.

2. The petitioner - original plaintiff - landlord filed Regular Civil Suit No. 289 of 1986 against the respondents for recovery of vacant possession of the suit premises on the ground of arrears of rent and sub-letting the suit suit premises. The trial Court after hearing the parties and considering the material on record, came to a conclusion that the plaintiff has failed to establish his case of subletting the suit premises against the respondents no. 2 and 3 who are in possession of two rooms and kitchen etc. of the suit premises and for remaining big room of the suit premises the trial Court allowed the suit in favour of the plaintiffs and against the respondents no. 1/1 to 1/7 and the suit was dismissed in respect of the respondents no. 2 and 3 vide judgment and decree dated 29-4-1995. Against that judgment and decree dated 29-4-1995 passed by the trial Court, the petitioner filed Regular Civil Appeal No. 53 of 1995 before the Joint District Judge, Fast Track Court, Surendranagar and the lower Appellate Court dismissed the appeal vide judgment and order dated 1-4-2003 whereby the judgment and decree passed in favour of the petitioner quashed and set aside though no appeal was preferred by the respondents no. 1/1 to 1/7 as they have already left the possession of one big room of the suit premises and against that judgment and decree passed by the appellate court, this Revision Application has been preferred u/s 29 (2) of the Bombay Rent Act before this Court.

3. Mr. R.S. Jitiya learned counsel for the respondents no. 1/1 to 1/7 states that the respondents no. 1/1 to 1/7 have left the possession of one big room of the suit premises and hence they have not claimed any right or interest for that one big room of the suit premises and they have also no objection if the decree of the trial Court qua them is restored. He further states that in case the judgment and decree passed by the trial Court in respect of one big room of the suit premises which was in possession of the respondents no. 1/1 to 1/7 is allowed, the respondents no. 1/1 to 1/7 have no objection as they have left possession of one big room of the suit premises and they have not contested the suit and they are not interested for that claim for any right or interest so far as that particular portion of the suit premises is concerned and therefore the judgment and decree of the lower appellate court requires to be

quashed and set aside so far as one big room of the suit premises is concerned and the trial Court's judgment and decree is required to be confirmed to that extent. He has also submitted that both the courts have recorded concurrent findings regarding dismissal of the suit in respect of the respondents no. 2 and 3 and no argument or contention has been raised to disturb the said concurrent findings of the Courts below in respect of the possession of the respondents no. 2 and 3 over two rooms and kitchen of the suit premises.

4. In the facts and circumstances of this case and in view of the submissions made by the learned counsel for the parties, this Civil Revision Application is partly allowed and the judgment and decree dated 1-4-2003 passed by the Joint District Judge, Fast Track Court, Surendranagar in Civil Appeal No. 53 of 1995 is quashed and set aside so far as one big room of the suit premises which was said to be in possession of the respondents no.1/1 to 1/7 who have already left the possession of one big room of the suit premises and the judgment and decree of the trial court in respect of the respondent no. 1/1 and 1/7 is confirmed and judgment and decree of the trial court as well as lower appellate court in respect of the respondents no. 2 and 3 is confirmed. Rule is made absolute to the aforesaid extent, with no order as to costs.

(Kundan Singh, J.)

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